SHARIAH IMPLEMENTATION IN NIGERIA 1999 – 2005: A REVIEW OF THE LEGAL, INSTITUTIONAL AND SOCIAL ESTABLISHMENTS

Being a paper presented at the National Conference on the Implementation of Shariah in Nigeria organized by the Kano State Shariah Commission, held at Kano on 9th – 11th June, 2006

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Prof. Ibrahim Ahmad Aliyu

Department of Islamic Law

Ahmadu Bello University, Zaria.

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1.0 Introduction

In the name of Allah, the Beneficent the Merciful. All praise be to Allah (SWT) who has created man and as such has the sole and inalienated right to give him command in respect of whatever he does in his life. May peace and blessings of Allah be upon His Prophet and Messenger, Muhammad (SAW) Whom He sent 'as a mercy for the alamin.'

The primary aim of this paper as can be understood from the title is to make a review and or appraisal of the legal, institutional and social establishments created by the Shariah states in Northern Nigeria since the re-introduction of 'full' Shariah legal system in the country from 1999 - 2005. Certainly the task is not an easy one especially one may not avoid making some observations relating to the successes and or failures of such states in their efforts at implementing Shariah. Notwithstanding, as a Muslim, one should be bold enough to make his contribution within the limits of his knowledge and understanding of the issues required to be reviewed. Therefore, in order to achieve the above stated objective, this presentation, will focus on what is Shariah – its nature and objectives; the re-introduction of 'full' Shariah in 'Shariah states', the review of some of the legal, institutional and social establishments for Shariah implementation; the problems and prospects of Shariah implementation and conclusion and suggestions.

It is relevant to state here that the 'Shariah states' referred to in this presentation are eleven states of Northern Nigeria, namely, Zamfara, Sokoto, Kebbi, Niger, Kaduna, Katsina, Kano, Jigawa, Bauchi, Borno and Yobe. However, this presentation has selected

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Zamfara, Kano and Bauchi states for purposes of illustrations and convenience only.

2.0 SHARIAH – ITS MEANING, NATURE AND OBJECTIVES

2.1 The Meaning of Shariah

The term 'Shariah' is Arabic which literally means a clear path or a way to watering place. The Holy Qur'an made it clear that water is the source of life. (Quran 21:30)

Jurisprudentially, Shariah means a clear and straight path designed by Allah the creator of man for the man to walk on. It lays down the entire scheme of life in such a way that virtues may flourish and vices may not contaminate human life.[1] 'Shariah' also means the straight path which if properly followed leads Muslims to the attainment of true faith, salvation and bliss (i.e. Islam) in this world and in the hereafter. It is the divine, immutable and everlasting command and injunction of Allah Almighty through the Holy Prophet Muhammad, designed to regulate and govern the entire human conduct and behaviour from conception to grave and the hereafter. Thus, it touches on both matters of *Ibadat* i.e. worship, faith and spiritual life as well as *mu'amalat* i.e. all other forms of transaction in human life or affairs. Shariah, therefore, through its system transforms man's character and purifying his heart, morals and conscience.

It can further be stated that Shariah covers individual attitude and conduct as well as social norms and laws, whether political, economic etc. Therefore, Shariah can best be described as a complete way of life which covers not only socio-economic aspects of human life, but also serves as a complete legal system embracing all qualifies required for an ideal and up to date legal system. It provides for all aspects of substantive and procedural laws concerning rights and duties and how justice can best be administered for the progress and betterment of mankind. Hence its penal and civil justice systems are divinely guided and administered.[2] In the words of Hon. Abdulkadir Orire, Shariah is 'a unique legal system which gives an ideal system of jusice.'[3]

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2.2 The Nature and Characteristics of Shariah

From the above definition of the term 'Shariah', some of its major features and or characteristics could be identified as follows:

(a) That it is divine in origin. It embodies the will of Allah who is sovereign and the ultimate lawmaker for the mankind, through the Holy Prophet Muhammad (SAW) (See Quran 7:54).

The fact that it is divine has made it to be free from selfishness, favoritism, partiality or contradiction. Thus, under Shariah, all human beings are regarded as equal (See Quran 49:13).

Consequently, in the eyes of Shariah, all human beings are equal before the law and, so there is no privileged class or group that is above the law. Again, because Shariah is divine, it has no conflict between what is law and what is morality as it is obtained under the secular legal system. In Shariah, morality is taken as the primary foundation for building a virile and strong society. Hence, the Holy Prophet (SAW) was reported to have said 'I have just been sent so as to perfect good virtues.[4]

(b) That it is comprehensive and all-encompassing dealing with every aspect of human activities and endeavors. It regulates legal, ritual, political as well as socio-economic aspects of human affairs. (See Q6:38 & 16:89)

Joseph Schacht as well as Iman Hassan Al-Bannah both acknowledged the fact that Shariah by its nature of comprehensiveness has the capacity of managing the whole life and all human existence.[5]

Furthermore, Shariah is a system for all times and generation. It is a universal system which is not limited to certain time or generation or to a certain place or people. The Holy Prophet Muhammad being also a representative of Shariah was sent as a mercy to all mankind. (See Quran 21:107 and Quran 7:158). See also the Supreme Court decision in Alkamawa Vs Bello per Justice Abubakar Bashir Wali (Rtd)[6]

Consequently, Shariah has guaranteed all the fundamental rights of every citizen (whether Muslims or otherwise) living under its system irrespective of color, status, race or sex or any other consideration.

(c) That it is immutable *(ath-Thabat)* and dynamic *(al-murunah)* This means that, on one hand Shariah consists of some fixed and absolute principles and objectives (e.g. punishments for *zina, sariqah* and

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Q*hazf*) that do not change because they do not even need to be changed. On the other hand, it responds to changing conditions in human endeavours and, therefore, provides for ample room where human beings can make positive contribution towards their socio-economic development but within the general framework and guidelines of the divine injunctions. Thus, *ijtihad* (i.e. independent mental reasoning) is recognized within Shariah for it keeps on moving with the changing needs of mankind, and for the attainment of the overall objectives of human development.

(d) That it is practicable for it takes the facts of reality into consideration in its rules and regulations relating to human conduct and life. That is why we find that Shariah neither prohibits anything that man needs for his life nor does it permit anything that is harmful.[7] This explains why it does not prohibit adornment or wearing beautiful cloths provided that man doesn't transgress the limits (See Q. 7:31-32). Again, as a practical system, Shariah permits in some special and extreme circumstance, what is ordinarily prohibited. The rule in this respect is: *ad-darurat tubihul mahzurat* (necessity makes permissible what is prohibited). This rules is in accordance with what the Holy Quran provides in *Suratul Baqrah* (2) verse 173. Similarly Shariah accepts that man is by nature weak and, therefore, tends always towards what is forbidden. In order to deal with such tendencies, Shariah makes provisions or rules blocking his way towards the doing of such forbidden practices. For instance, private meetings in a secluded place between a man and a woman out of wedlock is forbidden as it may lead to adultery or *zina*. Also lustful looks at the opposite sex is forbidden as it draws one closer to unlawful sexual relation. However, sexual urges are things inherent in mankind, so Shariah permits it but within lawful wedlock and so the institution of marriage is established for the protection of honour of mankind and the preservation of human specieis.[8]

The above represent only a few features of Shariah as identified in this presentation. They are very material in explaining what are the overall aims, purposes and objectives of the Shariah in relation to human life and development.

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2.3 THE OBJECTIVES OF THE SHARIAH

Shariah as a universal system of life that covers all mankind has several purposes and objectives. However, some of the most important objectives of Shariah which every Shariah state must ensure and promote may be briefly highlighted as follows:

(a) One of the main objectives of Shariah, according to Maududi Abul Ala is 'to construct human life on the basis of *ma'arufat* (virtues) and cleanse it of the *munkarat* (vices). The term *ma'arufat* denotes all virtues and good qualities that have always been accepted as 'good' by human conscience. Conversely, *munkarat* denotes all the sins and evils that have always been condemned by human nature as 'evil'. The Shariah gives a clear view of these *ma'rufat and munkarat* and states them as the norms to which the individual and social behaviour should conform."[9]

(b) Again, the purpose of Shariah is to realize and secure the general good and interest (*maslahah*) of the people by promoting their welfare as individuals and as a collective body, and keeping harm and injury away from them. In other words, the objective of Shariah revolves on the welfare, progress, benefits and development of mankind.[10]

(c) Shariah also recognizes the spiritual or moral life of man, hence it seeks to provide him with all spiritual nourishment needed for piety and righteousness, for his safety.

(d) Shariah ultimately aims at establishing and achieving justice, fairness, truth, freedom and peace. Hence every Shariah state must ensure the existence of a reasonable, fair and egalitarian social condition of its society based on justice, equity and truth.[11] Justice here could mean both social and legal justice, respect for rule of law, and rights and obligations of the people.

For Shariah to achieve and sustain the above identified objectives and goals, it adopts several measures, methods and techniques. In this regard, first, Shariah shapes the Muslims society in a way conducive to the unfettered growth of good, virtues and truth in every sphere of human activity, and gives full play to the forces of hindrances in the postage of virtues. Also it attempts to eradicate evil from its societal scheme by prohibiting vices, such as corruption, unjust enrichment from public treasury by administrators, dishonesty etc. It further obviates the cause of the appearance and growth of evils, by

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closing the inlets through which it creeps into society and adopting different measures to check its occurrence. Consequently, Shariah strikes a balance between the rights of a man as individual, his rights in the society as a group and the rights of Allah.[12]

Secondly, according to Professor A.S. Mikailu, Shariah seeks to actualize its purpose or purposes through the following socio-economic schemes and or measures in order of priorities:

(i) guaranteeing the vital needs (*daruriyyat)* of the people, e.g. food, housing, health, education etc.
(ii) catering for their requirements or exigencies (*Hajiyat*) and
(iii) allowing for 'betterment', that is, enhancement or improving in the quality of life of the people in the society (i.e. *tahsiniyyat)*[13]

Thirdly, for its objectives to be attained, the Shariah spelt out some interests of mankind which must be preserved at all costs or else the affairs of state or governance and religion will be overwhelmed by anarchy and chaos. These basic interests are, life, religion, property, lineage, intellect and honour.[14] The preservation of these matters, interests and objectives of the Shariah can best be achieved through appropriate criminal law and well established machinery for the administration of criminal justice.[15]

Therefore, a responsive Shariah state must encourage and ensure that its people observe religious, legal and socio-economic injunctions of the Holy Qur'an and the *sunnah* of the Holy Prophet. For example, people should upheld prayers. They should also sustain the institution of marriage. They must not be involved in *zina* or adultery, wine drinking or corruption. Furthermore, Muslims should be made, especially those who are rich, to pay *zakkat* and assist the poor and needy in the society.

Equally, the Shariah state must ensure the creation and adoption of a number of socio-economic policies as a pre-condition for the progress and development of its *ummah*. These policies include, the creation of employment opportunities, prudent usage of financial resources, the creation of conducive moral atmosphere for Shariah to take its root and the provision of other social security system to cater for the less privileged.

It can be observed from the discussions above on the meaning, nature and objectives of the Shariah that, it represents an all-

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encompassing scheme of life that regulates legal and socio-economic affairs of man for his best interest. Shariah no doubt is not confined to penal measures or courts system alone. It is just a misconception of what it stands for. Shariah equally provides for socio-economic development of mankind.

3. THE RE-INTRODUCTION OF 'FULL' SHARIAH IN THE NORTHERN STATES OF NIGERIA FROM 1999 TO 2005

3.1 Brief History of Shariah Implementation in Northern Nigeria prior to 1999

The implementation of Shariah in Nigeria, and particularly in the Northern part is not new because both Sokoto caliphate and Borno Empire which were full fledged Islamic states prior to the colonial period implemented Shariah in toto in the said Northern parts of the country, especially the eleven Shariah states. Mallam Ibrahim Suleiman captured the historic status of Shariah in the defunct Northern Nigeria as follows:

> "The Shariah has a very long history in Nigeria, dating back to about one thousand years ago when Borno Empire became Islamic and Shariah became its supreme law. Five hundred years ago Kano, then a center of commerce and learning submitted to the rule of Shariah. Two hundred years ago, an Islamic revolution took place in what is now the nucleus of Nigeria (the Sokoto Caliphate or Jihad), creating a state and civilization based entirely on the Shariah. Islam (Shariah) had reached some parts of Nigeria at about the same time it reached Egypt, in the first century."[16]

Thus, Clapperton the European explorer when he visited the defunct Sokoto Caliphate during the reign of Amirul Muminin Muhammad Bello, was able to comment as follows:

> "The laws of the Qur'an were in his (Bello's) time so strictly put in force.... That the whole country,

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> when not in a state of war, was so well regulated that it is s a common saying that a woman might travel with a casket of gold upon her head from one end of the Fellata dominions to the other."[17]

The above observation represents the successful implementation of full-fledged Shariah in the defunct Sokoto Caliphate. People and their property were certainly preserved, secured and protected. The said legacy of the Sokoto Caliphate leaders was so well preserved that in 1955, Professor Norman Anderson could not do otherwise than to testify that, "the Islamic law is more extensively followed and enforced in Northern Nigeria than in any where else in the world outside Arabia."[18]

Regrettably, the evil intervention of the British imperialists in the Sokoto Caliphate brought about the colossal collapse and destruction of the then polity and the systematic removal of not only the legal system of Islam, its machinery but also the socio-economic life and justice of the Shariah in terms of:

(a) eclipsing of the Arabic language and Islamic or Quranic education;
(b) the imposition of the roman script, the English law and western ideals of education and civilization;
(c) the actual attempts to abolish system of *zakkat* payment replacing it with tax and *jangali*;
(d) the further efforts at scrapping native (Islamic) courts system and replacing them with the English type courts;
(e) the imposition of the Penal Code of Northern Nigeria in place of truly Shariah criminal law and, therefore, abolishing the application of *Hudud* punishments as decreed in the *Quran* and *Sunnah* relating to *zina*, theft, robbery etc and
(f) the subjection of all other aspects of Islamic law in civil matters to different tests of repugnancy, incompatibility and making the meaning of native law and custom to include Islamic law.

The active and deliberate abrogation of the application of Shariah in the defunct Sokoto caliphate coupled with the 'amalgamation' or the 'mistake' of 1914 when Northern and Southern Nigeria were merged and called Nigeria by the British imperialists, in order to fulfill the

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undertakings of Lord Lugard to destroy the Shariah. The colonialists adopted all measures at their disposal to dispense with the Shariah system of life of the people of the Northern part within the unified or amalgamated country called Nigeria. They used statutory methods as well as constitutional and economic threats to diminish the implementation of the Shariah.

In 1960, Nigeria became sovereign independent country from British colonialists. That independence, however, was given at the expense of the Shariah and Islam. They made it a condition that before Nigeria was made independent Shariah must be abandoned and federalism adopted. Hence, the British imperialists in the same style with all the selfish and unjust people before and after them forced the Northern regional Government at the London constitutional conference in 1958 to denounce the continued application of Shariah criminal law. The Shariah was regarded as native law and custom so must not be applied in criminal matters. They said the only criminal law to be applied must be a codified or written criminal law. Therefore, the conference resolved and its resolution entrenched in the 1960 constitution that

> "No person shall be tried for criminal offence except for an offence which is codified under a written law."

Consequently, the Government of Northern region accepted the resolution, dropped the application of Shariah criminal law since it was not codified and adopted the Penal Code instead, for the political independence of Nigeria as well as guaranteed foreign investment in the region. Similarly, the 1960 Constitution reduced other matters of Shariah to personal status in favour of the application of the British received law.

The problem, however, was that notwithstanding the claim that the Penal Code incorporated some strict Islamic law provisions relating to crimes and punishment, yet many people from its operation and other procedural rules came to the conclusion that Penal Code is not truly Islamic and, therefore, never believed in it.

The 1975/76 attempts to enlarge the confined jurisdiction of Shariah courts of Appeal from that of Islamic personal law to all matters of Islamic law failed and under the 1979 constitution, the status

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of Shariah and the Shariah Court of Appeal remained at the background. The 1979 constitution retained the prohibition of the application of Shariah criminal law and the limited jurisdiction of the Shariah Court of Appeal. However, State High Court, a court of coordinate jurisdiction and mainly common law was given unlimited jurisdiction including powers to hear and determine appeal affecting Muslims and Islamic law other than personal matters.

The story of the Shariah since then is too long and too complex to be told in this presentation. It however, suffices to acknowledge here that throughout the pre-colonial era and throughout the post-independence era and to this day, Muslims response and attitude towards Shariah at whatever form, constitutional or otherwise has remained the same. Muslims continue to call for reform of the Nigerian legal system for a greater application of Shariah system of life as it affects them, since their faith demands for it. Unfortunately, on the other hand, non-Muslims and their Muslim allies who thought Nigeria is a secular state continued to resist and block all channels for the Shariah driven legal reforms in the country. Joseph Schacth described the position of Shariah to Muslims and their long standing attitudes for it as 'the zeal for maintaining the Shariah to its full extent."

3.2 Re-Introduction of 'full' Shariah in some Northern States From 1999 to 2005

The year 1999 in the historical development of Shariah legal in Nigeria cannot be forgotten. It was the year that witnessed the re-birth of the lost glory of the Shariah legal system especially its criminal justice system. That year came to be known as the year for the return of democratic rule in the country as well.

Again, May 29th 1999, the constitution of the Federal Republic of Nigeria 1999 commenced operation with the swearing in of the President Chief Olusegun Obasanjo and all other elected state Governors across the country, ushering the Nigeria's fourth republic.

Consequently, as Nigeria rejoined the world of democratic governance within the constitutional framework in 1999, Shariah re-appeared in its polity. Democracy marked a fresh start for Nigeria, especially that Muslims' spirit towards their long time aspirations and desire, restoration of the full implementation of Shariah was re-

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invigorated. Therefore, one must not be surprised in the light of the historical development of the Shariah within the Nigerian legal system, to see that most of the northern states and to be specific, Zamfara, Kano, Bauchi, Sokoto, Kebbi, Jigawa, Katsina, Borno, Yobe, Niger and Kaduna States (herein called the Shariah states') have chosen to return to the application of the Shariah, the legacy of their forefathers that had existed for several years even before the advent of the British imperialism.

At the beginning of this fourth republic, Zamfara state under Governor Ahmad Sani, Yariman Bakura, in a revolutionary move and initiative decided to re-introduce the application of Shariah in the present democratic governance. Of course he knows that 'Shariah' has been with the Nigerian legal system even prior to the colonial regime and thereafter. What, however, made 'special' and 'revolutionary' with the re-introduced Shariah in the present democracy, is the reform of the Penal Laws in Zamfara State by re-introducing the strict Shariah Criminal justice system more particularly, the *Hudud* punishments of stoning to death for adultery and amputation of hands for theft. This was what became very popular and controversial. It received a widespread support from and enthusiasm by the Muslims not only from the Northern States of Nigeria but also all over the country though with bitter and stiff resistance and condemnation from non-Muslims and some ill-informed Muslims secularists, both from within and without the country.

In less than one year after the Zamfara State Governor had signed into law the enabling legislation that brought into existence the new Shariah Penal Code, and the law which re-structured the state courts by introducing, in place of Area Courts, new Shariah courts pursuant to the Shariah courts (Administration of Justice and Certain Consequential Changes) Law 1999, other states in the North, especially the Shariah states, joined the move. The Shariah is being restored. The law i.e. the Shariah indeed is in force today. The strength of the Shariah process going on in Nigeria and some Northern States in particular, lies in the fact that it is not an imposition from the government but a grassroots phenomenon; an irresistible power of the Muslim masses, in the spirit of democracy, backed by passion and emotion borne out of one hundred years of denial of self expression

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and self fulfillment. This may help to explain why many states in the North opted for the reforms and its permanence.[19]

The rationale for the introduction of Shariah Penal Code by the government of Zamfara State in January 2000 could be found or built upon:[20]

(a) Its universal acceptance by Muslims who saw it as representing at least a fulfillment of their desire and zeal for maintaining the Shariah to its full extent, and
(b) It also expressed the commitment on the part of Muslims who have so openly and wholeheartedly embrace it to maintain a higher way of life in terms of attitude, disposition, conduct, standard, morality, values and goals.

Although the re-introduction of the Shariah system of life, especially its true criminal justice system, generated controversies and misconceptions regarding its constitutionality, rights of the non-Muslims and in some cases rights of women and most unfortunate violence and loss of lives, it seems that the Shariah has come to stay. These Shariah states adopted all legal and socio-economic and political measures to implement the provisions and objectives of the Shariah within the constitutional framework of the country.

4. THE REVIEW OF SOME LEGAL, INSTITUTIONAL AND SOCIAL ESTABLISHMENTS FOR SHARIAH IMPLEMENTATION.

'…. Given the positive frame of mind and resort to dialogue, enlightenment and counseling, the implementation of Shariah in the country would have been easier. This will also enhance the transformation of our country into a stronger, stable and more prosperous nation, where freedom of thought, conscience and religion, as enshrined in the constitution are fully protected. Further, the culture of good governance and respect for law and order will be deeply entrenched into our ethics while the positive attitudes of discipline, hard work, tolerance, accountability and transparency and respect for each other will prevail. These are the much needed basic ingredients of national growth"[21]

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By the nature of the way Shariah issue unfolded itself, and in view of the different peculiarities of the various states embarked on Shariah implementation, particularly, Zamfara, Kano and Bauchi for example, there are bound to be dissimilarities in the approaches adopted by these states. These differences in themselves are not unhealthy development. It may not be easy to categorically state that Zamfara Model or the Kano approach or the Bauchi style or that of any other state is the best or standard approach. This presentation may not be sufficient to identify such areas of differences. However, one important issue that has continued to generate discussion in the whole process of Shariah implementation is the question of priotization of the implementation programmes. For instance, it is often asked which shall come first: is it education and enlightenment, or enactment and enforcement of laws, or exemplary conduct or good governance and creation of conducive soico-economic atmosphere or is it the creation of understanding through dialogue and persuation.[22]

The above diversities notwithstanding, it is to be observed that, these Shariah States, particularly Zamfara, Kano and Bauchi have clearly approached the implementation of Shariah from two broad angles, to wit – Enactment of and enforcement of substantive and procedural based Shariah laws and institutions as well as establishment of some institutions for the implementation of socio-economic benefits and objectives of Shariah. It is, therefore, pertinent at this juncture to make a brief review of the said legal and socio-economic institutions for the effective Shariah implementation, within Zamfara, Kano and Bauchi states as a case study.

4.1 The Review of Some Laws and Legal Institutions for the Effective Implementation of Shariah

The Shariah states under review since 1999 to date have continued to enact some laws and make reform in some legal institutions, for the smooth and effective implementation of the re-introduced full Shariah legal system. The legal reforms carried out affect for example, the Shariah Penal System or Shariah Criminal Justice System, its administration and enforcements through courts, its supervisory bodies and or agencies. Similarly, some new institutions,

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or bodies, like Shariah Commission and *Hisba* boards were established for the effective monitoring and enforcement of the Shariah based 'Penal' legislation in these states.

Some laws and legal institutions enacted, and established may be identified as follows:

(a) **Shariah Courts Laws**[23]
(b) **Shariah Court of Appeal (Amendment) Law**[24]
(c) **Area Courts (Repeal) Law**[25]
(d) **Shariah Criminal Procedure Code Law**[26]
(e) **Zamfara State Magistrates Courts (Restriction of Powers) Law 2002.** It excludes powers of magistrates to try and punish accused persons who are Muslims.

Collectively taken, the above laws enacted by the said Shariah states under review brought about some fundamental reforms in their courts structures and general administration of justice especially relating to Shariah penal laws as re-introduced. In effect, Shariah courts were established in accordance with the constitutional powers given to the states and such courts replaced the former Area Courts system. Such Shariah Courts are of different grades and conferred with jurisdiction in both civil and criminal matters. They are strictly required to apply the principles of Shariah or Islamic law in the conduct of their proceedings and determining the rights and obligations of the litigants before them as provided in the Quran and Sunnah of the Holy Prophet (S.A.W) and interpreted according to the Maliki School of Jurisprudence. They are also empowered in criminal proceeding to apply the provisions of the Shariah Penal Code guided by the Shariah Criminal Procedure Code for the proper conduct of the trial of offenders of Shariah laws. Primarily, such Shariah Courts have jurisdiction over parties who are Muslims only but may exercise jurisdiction over non-Muslims who voluntarily consent and submits to their jurisdiction.[27] Again, Zamfara state, Magistrate courts have no jurisdiction to try Muslim offenders.

Furthermore, the jurisdiction of the Shariah Court of Appeal has been extended to cover not only appeals on matters of Islamic personal law but rather cover all aspects or matters of Islamic law in civil or criminal proceedings arising from the decisions, judgments and

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or sentences of the Shariah Courts.[28] This extension of the jurisdiction of the Shariah court of Appeal to hear and determine appeals from Shariah Courts brought into legal debate on its constitutionality or otherwise especially if compared with the jurisdiction of the State High Courts as conferred under the constitution of the Federal Republic of Nigeria. In fact and practice, Shariah Courts of Appeal today do entertain and determine appeals from the Shariah Courts in cases involving all matters of Islamic law. The criminal Appeals of Safiya Hussaini Vs. State and Amina Lawal Vs State determined by the Sokoto State Shariah Court of Appeal and the Katsina State Shariah Court of Appeal are clear proof of the exercise of the new jurisdiction of such courts.

Again, under the reforms brought in the courts and administration of justice in Shariah States, legal practitioners are given unhindered right of audience in both civil and criminal matters to represent their clients. The police too prosecute cases before such courts. Finally, the Shariah courts are now under the control and supervision of the office of the state Grand Kadi (without prejudice to the constitutional function of the state Judicial Service Commission) and not under the control of the state Chief Judge as obtained under the defunct Area courts system arrangment.[29]

(f) **Shariah Penal Code Law[30]**

This is one of the most important radical legislation in the entire process of the implementation of Shariah and its criminal justice administration in the Nigerian democracy under the 1999 constitution. It seeks to bring back the lost glory of the Islamic legal system that punishes *Hudud* and *Qisas* offences in accordance with the Supreme divine injunctions of the Holy Quran and Traditions of the Prophet (S.A.W) as strictly interpreted by Muslim jurists of the Maliki School. This law provides for the substantive Shariah Penal Law to be applied in the Shariah States concerned. The Shariah Courts are to apply the provisions of the said Shariah Penal Code primarily on Muslims offenders, even though where a non-Muslim voluntarily consent to its application, the courts may apply the law on him.[31] The law became very popular with its punishment of stoning to death for the offence of

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Zina by a married person[32] and the punishment of amputation of hands of a thief.[33]

(g) Penal Code (Amendment) Law[34]

This law amended the traditional existing Penal Code by prohibiting possession and dealing with alcohol and all forms of intoxicant in the states whether or not the person concerned is a Muslim.

(h) The Liquor (Repeal) Law[35]

This law primarily repealed the liquor law, 1991 of the said states and further in Bauchi State, it 'revoked any licence, permit, certificate or any similar instrument granting or conferring any right to any person to deal in alcohol or alcoholic drinks issued pursuant to any local government bye-laws or laws of the state. This law and the amendment to the Penal Code has both legal and socio-economic impact on the life of all persons residing in the states concerned.

The above laws identified are but only some major ones out of many enacted to deal with substantive rights and obligations of the people in the Shariah states to go in line with its overall objective of ensuring justice and protection of basics rights of every citizens.[36] There are other laws, however, enacted to set up and establish socio-economic institutions for the effective implementation of Shariah and its objectives.

4.2 The Review of Some of the Socio-Economic Establishments or Institutions for the Effective Implementation of Shariah

Zamfara state under the leadership of Governor Ahmad Sani Yariman Bakura, Kano State under the leadership of Malam Ibrahim Shekarau and Bauchi State under the leadership of Ahmad Adamu Mu'azu, each in his own approach embarked on some socio-economic institutional reforms supported by necessary laws that would ensure the smooth and effective implementation of Shariah objectives, goals and principles for the overall development of the people.

Some of the socio-economic and moral establishments or institutions may be identified as follows:

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(a) Kano and Bauchi states each has established Shariah Commission,[37] Zamfara State established Shariah Research and Development Commission[38] and together with the Ministry of Justice and or Judicial Service Commission to bring about the needed smooth monitoring and implementation of Shariah policies and programmes.

The Shariah Commission under the necessary enabling law creating it in each state is vested with some powers and functions that are relevant for bringing the much needed socio-economic changes in the life of the people of the state in line with what Shariah stipulates. Hence it is hoped to forestall the decline or at least lengthen the life of the Shariah implementation.

In Bauchi state, in particular, its Shariah Commission for its effective operation has three major committees, namely;

- *Hisba* Committee – mainly charged with the responsibility of monitoring and enforcing Shariah based legislation, especially the Shariah Penal Code, Laws prohibiting prostitution and intoxicants or alcohol, and other immoral acts. It also serve as an alternative dispute resolution mechanism where parties may submit themselves without going to court for amicable resolution of their difference under the guidance of Shariah principles
- *Zakkat* Committee – vested with the responsibility of collecting and distributing *zakkat* from wealthy individual Muslims to the needy and indigent members of the society.
- Shariah Matters and Enlightenment Committee - This committee keeps people of the state enlightened about laudable programmes of the state through the Shariah implementation by going to media especially radio and television as well as organizing preachings, workshops and seminars. Sensitizing the moral values and conscience of both private and public office holders on the need to maintain transparency, honesty and accountability. Educational programmes of the state are also being reformed especially the *almajiri Quranic* education with the assistance of this committee.

(b) Kano state also established additional organs to tackle Shariah implementation. These include, Shariah Implementation Advisory Committee, *Hisba* Board under Kano State *Hisbah* Board law, 2003,

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and *Zakkah* and *Hubusi* Commission pursuant to Kano State *Zakkat* and *Hubusi* Commission Law 2003. And recently Kano State has taken a bold step to reform Almajiri Qur'anic education, protecting rights of such children to education, health and care.

(c) In Zamfara State, in addition to Shariah Commission, it has established the Ministry of Religious Affairs, Hisba Commission, Anti-corruption Commission, Public Complaint Commission (*Raddul Mazalim*) etc to implement Shariah.[39] Zamfara State has also embarked on Skills Acquisition Programme, aimed at providing training opportunities to the teeming unemployed youth in the stat irrespective of their educational background, gender and disability. The Council of Ulama also serves as the principal body of learned persons in Islamic law generally guiding the State policies in line with Shariah.[40]

It is noteworthy that each of the above mentioned states have made remarkable achievement through their socio-economic policies, programmes and institutions in transforming the life of their people. There is the drastic control of prostitution, alcohol sale and consumption especially in public, improvement in job opportunities; for instance, Kano State *Hisba* Corps has about 9,000 workforce, despite the recent controversies over its activities with the Police and Federal government. Theft and other vices have been drastically reduced. There is also a publich enlightenment programme under *A Daidata Sahu* which helps a lot in improving the moral conduct of the people. The educational programmes also brought some reforms into the *Almajiri* system of Quranic learning whereby the teachers and the pupils are now being financially treated well by Governments and western Education also being incorporated. All these efforts are in line with what the Holy Quran said:

> "Let there arise out of you a group of people inviting to all that is good (Islam) enjoin at *ma'ruf* (i.e. Islamic monotheism and all that Islam orders to do) and forbidding *al-munkar* (polytheism and disbelief and all that Islam has forbidden). And it is they who are successful." See Q3:104. see also Q 3:110 and Quran 9: 71-72.

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5. PROBLEMS AND PROSPECTS OF SHARIAH IMPLEMENTATION

No doubt that implementation of 'full' Shariah as re-introduced by the Shariah states in Nigeria in 1999 to date has encountered and is still facing several problems and challenges. However, it has equally recorded some success and so it has better prospects in the future.

Some of the major problems and challenges on the path of Shariah implementation include:

(a) Constitutional constraints
(b) Misconceptions about its application over non-Muslims, violation of women and child rights.
(c) Variations in the content and substance of the several laws enacted in the Shariah states.
(d) Institutional conflicts over management and enforcement of Shariah laws, especially, the role of *Hisba* and police in the prevention of crimes. The conflicts between courts over jurisdiction to try and or hear cases involving Muslims etc.
(e) Federal government, international organization and other Human rights non-Governmental organization's criticism about Shariah and its implementation, especially The criminal justice system has been made today virtually ineffective in terms of enforcement and execution of some *Hudud* sentences pronounced by Shariah Courts.
(f) In areas of politics and economy, Shariah is yet to make serious impact as the country is operating constitutional government whose policies relating to politics and economy are generally against Islamic principles, for instance banking operation based on interest.
(g) Lack of strong political will and determination on the part of Muslim leaders.

On the other hand, Shariah implementation has certainly recorded some successes even if not complete, at least one can say that one of the major benefits of the Shariah implementation reforms is the way an agenda for the transformation of the Muslim society has been set. This tends to give the Muslims clear focus and hope.[39] In addition, the Muslims have a kind of relief that at last, what they have faith in and

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thought to be the best for their guidance according to the dictates of the Creator Allah, even if symbolically has come to stay in this country.

6. CONCLUSION

Since 1999 to date when Shariah has been re-introduced in many states of Northern Nigeria, Muslims have continued to show their acceptance to it. They have high expectations from the authorities implementing the Shariah, hoping that Government would henceforth endeavour to be upright, trustworthy and competent, law would apply equally to all – rich or poor, weak or strong, male or female, free and equal access to law and justice, a steady increase in security of life, property, honour, intellectual and religion. Again, the Muslim society expects Shariah states to provide the equal opportunities and facilities for education, health and shelter. Despite the several difficulties and challenges facing the smooth implementation of Shariah interests of the people should be the priority.

- Fundamental institution of *Zakkah*, *waqf* and *Hubusi* known to Shariah should be recast in a framework of contemporary economic situation driven by investment, industrialization and banking free from *Ribah*;
- Similar, *waqf* funds should be channeled through providing social, economic and educational services in the community;
- The Shariah states must as a matter of priority embarked on educating every Muslim child, male or female, for knowledge is power and source of all wealth and development;
- Above all, people in authority and who are entrusted with the leaderships of such states and implementation of Shariah must put the fear of Allah in their mind and dealings, for if not now, they must account for their stewardship in the Hereafter.

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5. Ibid, p.32 where Schacht in his book 'The Origin of Muhammadan Jurisprudence' p. observed: "The Sacred law of Islam is an all-embracing body of religious duties, the totality of Allah's command, that regulate the life of every Muslim in all its aspects; it comprises on equal footing ordinances regarding worship and ritual as well as political and (in the narrow sense) legal rules" while Imam Hassan Al-Banna was quoted by Kardawi, Y. (1995) in his book 'Introduction to Islam' Islamic Inc. publishing & Distribution Cairo Egypt, p.140 saying: "It (Shariah) is a message with a length that covers time from the beginning and forever, with a width that encompasses the horizons of all nations, and with a depth that contains the affairs of this life and the life to come."

6. (1998) 6 SCNJ p.130

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9. As quoted by Babaji B, op. cit. p.22.

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40. Umar Baffa Aliyu; op. cit. p.10

41. See SS.9 – 14 of Zamfara State Shariah Establishment Law, 1999 and Zamfara State Establishment of the Council of *Ulama*, 2003. besides there are other commissions and Boards, such as Preaching Commission, Anti-Corruption Commission, *Zakkat* and *Waqf* Board established for the successful implementation of Shariah in Zamfara State.

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43.
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